IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3372 of 1992
With
CIVIL APPLICATION No. 2451 of 2006
In SPECIAL CIVIL APPLICATION No. 3372 of 1992

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHANUPRASAD G JOSHI - Petitioner(s)
Versus
DEESA MUNICIPALITY & 2 - Respondent(s)

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Appearance :

MR DIPAK RAWAL for MR ANAND for Petitioner(s) : 1,
MS MITA PANCHAL, AGP for Respondent(s) : 1,
MR MEHUL H RATHOD for Respondent(s) : 2,
MS SONAL R SHAH for MR YN OZA for Respondent(s) : 3,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 04/09/2006

ORAL JUDGMENT

This is a petition preferred by the aggrieved employee of the respondent No.1 Deesa Municipality (hereinafter referred to as, **“the Municipality”**).

By order dated 4th September, 1991 made by the Municipality, the petitioner was appointed as a Shop Inspector on the terms and conditions stated therein. Feeling aggrieved by the appointment of the petitioner as Shop Inspector, the respondent No.3 challenged the same before the District Collector under Section 258 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as, **"the Act of 1963"**). The District Collector was, by its order dated 6th April, 1992, pleased to allow the said appeal. The District Collector set-aside the appointment of the petitioner and directed that the respondent No.3 be promoted as Shop Inspector. Feeling aggrieved, the petitioner has preferred the present petition.

The gravamen of the challenge to the impugned order of the District Collector is that the District Collector had no authority to direct promotion of the respondent No.3. The appointing authority being the Municipality, the order made by the District Collector was without the authority of law. The petition was admitted to final hearing on 22nd October, 1993 and the impugned order of the District

Collector was ordered to be stayed.

I am informed at the bar that in view of the aforesaid interim order dated 22nd October, 1993 the petitioner continued as a Shop Inspector till, on reaching the age of superannuation, he retired from service on 3rd August, 2005. Mr.Rawal has submitted that as far as the petitioner is concerned, the cause of action does not survive. The petition has thus become infructuous.

Mr.Rathod has submitted that under the Municipality one post of Shop Inspector was sanctioned on which the appointment of the petitioner was made by the aforesaid order dated 4th September, 1991. The petitioner continued on the said post from 4th September, 1991 till he retired from service on 3rd August, 2005. Since his retirement, the said post of Shop Inspector has been filled-in by promotion of one Shri R.B.Vyas made on 30th December, 2005. He has submitted that the impugned order of the Collector cannot now be implemented and requires to be quashed and set-aside.

Ms.Shah has submitted that though the respondent No.3 was a contender for the post of Shop Inspector, he has been denied his due right to promotion on the sole ground of the above referred stay order made on this petition. She has submitted that atleast since the retirement of the petitioner on 3rd August, 2005 the respondent has a right to be considered for promotion as Shop Inspector on the basis of his seniority.

As recorded hereinabove, in view of the aforesaid order dated 22nd October, 1993 made on this petition and in view of passage of time, the cause of action shall not survive. Further, the District Collector indeed erred in issuing direction to the Municipality in exercise of the power conferred under Section 258 of the Act of 1963 to appoint the respondent No.3 as Shop Inspector. The District Collector did exceed the power conferred by Section 258 of the Act of 1963. To that extent the impugned order requires to be quashed and set-aside.

In above view of the matter, the petition is allowed. The impugned order dated 6th April, 1992 made by the District Collector, Banaskantha in Municipal Appeal No.4/1991 is quashed and set-aside. Rule is made absolute. The interim order stands vacated. Civil Application stands disposed of. The parties shall bear their own cost.

It is clarified that the respondent No.3 shall have a right to claim appointment as Shop Inspector by promotion or otherwise. If such a claim is made, the same shall be considered in accordance with law. In the event, the Municipality does not accept the claim of the respondent No.3, the respondent No.3 shall have a right to challenge the decision of the Municipality.

(Ms. R.M.Doshit, J.)

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